

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

IN RE:

CIRCUIT CITY STORES, INC. et al

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Case No. 08-35653 (KRH)

Chapter 11

**CITY OF FREDERICKSBURG'S RESPONSE TO DEBTORS' 37TH OMNIBUS
OBJECTION TO CLAIMS AND REQUEST FOR ABSTENTION**

COMES NOW the City of Fredericksburg, Virginia, by counsel, and files this Response to the Debtor's 37th Objection to Claims and Request for Abstention and in support thereof states as follows:

1. The City of Fredericksburg is a city government in the Commonwealth of Virginia. As part of its governmental functions, it assesses and collects taxes on a number of subjects including business personal property.
2. The Debtors request this Court to determine the assessed value of their personal property in the City of Fredericksburg in their claim objection. The Debtors contend that the property was overassessed, although the assessments were made based on the debtor's tax filings.
3. The Debtors have failed to rebut the presumption of correctness of the assessment under Virginia law or presented any evidence to overcome the prima facie validity of the claim under 11 U.S.C. §502.

This action should be dismissed as it is required to be filed as an adversary proceeding
under Bankruptcy Rule 7001

4. The Debtors herein are contesting the assessed valuation of certain personal

property located within the City.

5. These ad valorem taxes constitute liens on the property being assessed and such liens arise on January 1 of each year, the tax valuation date. Code of Virginia §581-3400, §58.1-3941.
6. As the debtor seeks to reduce the value of the assessed property, it is, in fact, asking this Court to rule on the amount of taxes due which is the effective amount of the localities' lien. Since this proceeding seeks to reduce the amount and extent of the City's liens, it must be filed as an adversary proceeding pursuant to Bankruptcy Rule 7001.

This Court should abstain from determining the local tax assessments as it will upset the required uniformity of tax assessments in violation of the Virginia Constitution

7. Pursuant to 28 U.S.C. 1334 (c)(1), the City respectfully request this Court to abstain from the determination of the proper assessed values for the property in question as such determination is extremely fact specific and such determination has the potential to undermine the uniformity of assessment, as required by the Virginia State Constitution. (Article X, § 1)
8. While the courts recognize that abstention should only be used in exceptional circumstances, it has been used in tax issues where the uniformity of assessment is an issue. *Metromedia Fiber Network, Inc. v. Various State and Local Taxing Auth*, 299 B.R. 251, 281 (Bankr.S.D.N.Y.2003)
9. Courts have previously considered the requests of taxing authorities to abstain from determining tax assessments under §505 and has used a six factor test to determine if it should abstain:

These factors include: 1) the complexity of the tax issue; 2) the need to administer the bankruptcy case in an orderly and efficient manner; 3) the burden on the bankruptcy court's docket; 4) the length of time required for

trial and decision; 5) the asset and liability structure of the debtor; 6) the prejudice to the debtor and the potential prejudice to the taxing authority.

In re ANC Rental Corp., 316 B.R. 153, 159 (Bankr.Del. 2004) citing *In re Beisel*, 195 B.R. 378, 380 (Bankr.S.D.Ohio, 1996).

10. The determination of local tax assessments is extremely complex and extensively fact intensive. Each local jurisdiction has its own taxing methodology which can differ significantly from that of its neighbor. The Debtors purport to arrive at a fair market valuation systematically without taking into account the specific local nature of the taxes.
11. If this Court were to decide and determine these tax liabilities, it would have to evaluate each of the taxing authorities' taxing schemes, in Virginia and throughout the country, including, among other factors, physical inspection cycles, rules for capitalization of personal property assets, classification and categorization of assets and varying depreciation schedules for different asset types.
12. "Local property taxation is inherently and quintessentially local in the sense that a fair allocation of the cost of government amongst the universe of local taxpayers is and must be a product of local political, legislative, executive and administrative decision-making...The fundamental objective of taxation at the state and local level must be to apportion the tax burden equitably in accordance with the local political decision-making process. Nothing in the Constitution or the Bankruptcy Code entitles a debtor to uniform property tax determinations in differing tax jurisdictions, and nothing in federal law entitles the federal courts to impose uniform taxation schemes or methodologies on state and local governments." *Metromedia Fiber Network, Inc. v. Various State and Local Taxing Auth.*, 299 B.R. at 281.
13. These determinations would also place a heavy burden on the Court's docket, potentially requiring the determination of hundreds (if not thousands) of local

tax assessments each with their own assessment schema. Complex and fact intensive litigation of this nature would most likely hinder the orderly and efficient administration of the case as the time to try each of these matters would require specific evidence of the particular taxing and assessment methodology employed in each local jurisdiction, the determination of the property or assets that constitute the assessment and the proper valuation of each of those assets under the particular local taxing scheme under the dictates of State law. Such a hearing would require expert testimony on the proper valuation of these assets.

14. While the Virginia Constitution requires that all tangible personal property be assessed at fair market value; Constitution of Virginia, Article X, §2, where it is “impossible or impractical to enforce both the standard of true value and the standard of uniformity and equality, the latter provision is to be preferred as the just and ultimate end to be attained”. *R. Cross v. City of Newport News*, 217 Va. 202, 207 (1976).
15. “In the context of section 505, abstention is often used where uniformity of assessment is an issue.” *ANC Rental Corp.* 316 B.R. at 159; *Metromedia*, 299 B.R. at 281. “Ad Valorem property taxation is governed by local law, and there is compelling local interest in “uniformity of assessment” in fairly allocating the local tax burden.” *Metromedia*, 299 B.R. at 281.
16. The Debtors’ Objection to Claims fundamentally ignores the local nature of the property tax assessments and requests this Court to apply uniform valuations across localities and States. This Court should recognize the local nature of local property tax assessment and abstain from determining the local property tax liabilities in this matter.

WHEREFORE, the City of Fredericksburg, Virginia requests that this Court abstain from the determination of the tax liabilities in this case, or dismiss the Objection as requiring an adversary proceeding, and for such other relief as the Court deems appropriate.

Respectfully submitted,

CITY OF FREDERICKSBURG, VIRGINIA

/s/Jeffrey A. Scharf
Jeffrey Scharf
Taxing Authority Consulting Services, P.C.
P.O. Box 71476
Richmond, VA 23255
(703) 425-7751
FAX: (804) 545-2342
jeff@taxva.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Response to the Debtor's 37th Omnibus Objection to Claims and Request for Abstention was sent via ECF to the counsel for the debtors, the US Trustee and all parties requesting electronic notice:

Robin S. Abramowitz on behalf of Creditor Bond Circuit VIII Delaware Business Trust
abramowitz@larypc.com

Angela Sheffler Abreu on behalf of Creditor PNY Technologies, Inc.
aabreu@mccarter.com, rowan20@excite.com

Benjamin C. Ackerly on behalf of Creditor COMSYS Information Technology Services, Inc. and COMSYS Services, LLC
backerly@hunton.com, cloving@hunton.com

Christopher M. Alston on behalf of Creditor 507 Northgate LLC
alstc@foster.com, laboj@foster.com

Mark K. Ames on behalf of Creditor Commonwealth of Virginia, Department of Taxation
mames777@yahoo.com

Heather Lynn Anderson on behalf of Creditor State of New Jersey, Division of Taxation
Heather.Anderson@dol.lps.state.nj.us

Tara B. Annweiler on behalf of Creditor American National Insurance Company
tannweiler@greerherz.com

Henry P. Baer on behalf of Creditor Bell'O International Corp.
CSommer@fdh.com, csommer@fdh.com

Peter Barrett on behalf of Creditor Cole CC Groveland FL, LLC
peter.barrett@kutakrock.com,
lynda.wood@kutakrock.com;sara.abrams@kutakrock.com;elenora.allen@kutakrock.com

Raymond William Battaglia on behalf of Creditor Miner Corporation
rbattaglia@obht.com

Philip C. Baxa on behalf of Creditor Dicker-Warmington Properties
phil.baxa@mercertrigiani.com, liz.camp@mercertrigiani.com

Christopher R. Belmonte on behalf of Creditor International Business Machines Corporation
cbelmonte@ssbb.com, asnow@ssbb.com, pbosswick@ssbb.com

Paula S. Beran on behalf of Creditor Committee Official Committee of Unsecured Creditors

pberan@tb-lawfirm.com, dleadbeater@tb-lawfirm.com; stavenner@tb-lawfirm.com; jsnyder@tb-lawfirm.com

Jason B. Binford on behalf of Creditor BB Fonds International 1 USA, L.P.

jason.binford@haynesboone.com

Ron C. Bingham on behalf of Creditor c/o Ron C. Bingham T.D. Farrell Construction, Inc.

rbingham@stites.com, dclayton@stites.com

Patrick M. Birney on behalf of Creditor Schimenti Construction Company LLC

pbirney@rc.com, icarrion@rc.com

Paul M. Black on behalf of Creditor Sony Pictures Home Entertainment Inc.

pblack@spilmanlaw.com, cquesenberry@spilmanlaw.com

Daniel F. Blanks on behalf of Debtor Abbott Advertising Agency, Inc.

dblanksmcguirewoods.com

Paul S. Bliley on behalf of Creditor 1890 Ranch, Ltd.

pbliley@williamsmullen.com,
rcohen@williamsmullen.com; hpollard@williamsmullen.com

Sarah Beckett Boehm on behalf of Debtor Abbott Advertising Agency, Inc.

sboehm@mcguirewoods.com, kcain@mcguirewoods.com

Wanda Borges on behalf of Creditor Sharp Electronics Corporation

borgeslawfirm@aol.com

Anne Elizabeth Braucher on behalf of Creditor DL Peterson Trust, as Assignee of PHH Vehicle Management Services, LLC

anne.braucher@gmail.com

James J. Briody on behalf of Creditor Johnson City Crossing, L.P.

jim.briody@sabl原因.com, kim.smith@sabl原因.com

William A. Broschious on behalf of Attorney Kepley Broschious & Biggs, PLC

wbroscious@kbbplc.com

Timothy Francis Brown on behalf of Creditor 13630 Victory Boulevard, LLC

brownt@arentfox.com, giaimo.christopher@arentfox.com

Martin A. Brown on behalf of Creditor Express Services, Inc.

martin.brown@lawokc.com

Steven L. Brown on behalf of Creditor Walter E. Hartman & Sally J. Hartman, as Trustee of the Hartman 1995 Ohio Property

brown@wolriv.com, bankruptcy@wolriv.com

Mark E. Browning on behalf of Creditor Texas Comptroller of Public Accounts
bk-mbrowning@oag.state.tx.us, sherri.simpson@oag.state.tx.us

Andrew M. Brumby on behalf of Creditor Cameron Group Associates LLP
abrumby@shutts-law.com, rhicks@shutts-law.com

Kristen E. Burgers on behalf of Creditor CWC Capital Asset Management LLC
keburgers@venable.com

William A. Burnett on behalf of Creditor Burbank Mall Associates, LLC
aburnett@williamsmullen.com

Marc A. Busman on behalf of Plaintiff Marlon Mondragon
mbusman@busmanandbusman.com

Aaron R. Cahn on behalf of Unknown Reliance Figueroa Associates, L.P.
cahn@clm.com

Paul K. Campsen on behalf of Creditor Crossways Financial Associates, LLC
pkcampsen@kaufcan.com

Robert A. Canfield on behalf of Creditor Cornella Beverly
bcanfield@canfieldbaer.com,
sstanley@canfieldbaer.com; hivey@canfieldbaer.com; bhochfelder@canfieldbaer.com

Peter J. Carney on behalf of Creditor c/o William S. Coats Pinnacle Systems, Inc.
jlerner@whitecase.com, [jrubicava@whitecase.com](mailto:jrubalcava@whitecase.com)

William H. Casterline on behalf of Creditor ACCO Brands Corporation
wcasterlinejr@blankeith.com, bford@bklawva.com

Jeffrey Chang on behalf of Creditor ACCO Brands Corporation
jchang@wildman.com

Eugene Chang on behalf of Creditor TKG Coffee Tree, L.P.
echang@steinlubin.com

Wm. Joseph A. Charboneau on behalf of Creditor Los Angeles et al.
jcharboneau@mfgs.com, lcopenhaver@mfgs.com

Sara L. Chenetz on behalf of Creditor Sony Pictures Entertainment Inc.
schenetz@sonnenschein.com

Dominic L. Chiariello on behalf of Creditor Donovan Dunwell
dc@chiariello.com

Charles W. Chotvacs on behalf of Creditor Bear Valley Road Partners LLC
cwchotvacs@gmail.com, aconway@taubman.com; Pollack@ballardspahr.com

Anthony J. Cichello on behalf of Creditor Loop West, LLC, by its Managing Agent The Wilder Companies, Ltd.
acichello@kb-law.com

City of Newport News, Virginia
jdurant@nngov.com

Darrell William Clark on behalf of Creditor Waste Management, Inc.
dclark@stinson.com, cscott@stinson.com

James E. Clarke on behalf of Interested Party Bond-Circuit IX Delaware Business Trust
vaecf@atlanticlawgrp.com, rbailey@atlanticlawgrp.com

Tiffany Strelow Cobb on behalf of Creditor AOL LLC
tscobb@vorys.com, cdfricke@vorys.com

Andrew Lynch Cole on behalf of Interested Party Faber Bros., Inc.
acole@fandpnet.com

Ken Coleman on behalf of Interested Party Alvarez & Marsal Canada, ULC
Ken.Coleman@allenoverly.com, amelie.baudot@allenoverly.com

Michael A. Condyles on behalf of Creditor Bank One Delaware, National Association n/k/a Chase Bank, USA
michael.condyles@kutakrock.com,
lynda.wood@kutakrock.com; kimberly.pierro@kutakrock.com

Mark B. Conlan on behalf of Creditor Bond Circuit IV Delaware Business Trust
mconlan@gibbonslaw.com

Andrew S. Conway on behalf of Creditor Taubman Landlords
aconway@taubman.com

Eric C. Cotton on behalf of Creditor Developers Diversified Realty Corporation
hsmith@ddr.com

Robert K. Coulter on behalf of Creditor United States of America
robert.coulter@usdoj.gov,
sharon.abbott@usdoj.gov; USAVAE.ALX.ECF.BANK@usdoj.gov

David H. Cox on behalf of Creditor 610 & San Felipe, Inc.
dcox@jackscamp.com, phaynes@jackscamp.com; dstewart@jackscamp.com

John M. Craig on behalf of Creditor American Electric Power
johncraig@aol.com, russj4478@aol.com

Catherine Elizabeth Creely on behalf of Creditor CIM/Birch St., Inc.
ccreely@akingump.com, bpatrick@akingump.com

William C. Crenshaw on behalf of Creditor Gould Livermore LLC

bill.crenshaw@bryancave.com,
michelle.mcmahon@bryancave.com; tammy.scott@akerman.com

Paul McCourt Curley on behalf of Creditor Carrollton Arms, LLC
pcurley@canfieldbaer.com, tchilders@canfieldbaer.com

Heather D. Dawson on behalf of Creditor Westgate Village, LP
hdawson@kkgpc.com, scarlberg@kkgpc.com; kculpin@kkgpc.com

Gilbert D. Dean on behalf of Interested Party Faber Bros., Inc.
gdean@coleschotz.com, idonaghy@coleschotz.com

Christopher M. Desiderio on behalf of Creditor Greystone Data Systems, Inc.
cdesiderio@nixonpeabody.com

Deborah H. Devan on behalf of Creditor CC Indianapolis 98, CC Jackson 98, CC Harper Woods 98, CC Green Bay 98, CC East Lansing 98
dhd@nggrg.com

Jaime Sue Dibble on behalf of Interested Party Garmin International, Inc.
jdibble@stinson.com, lbigus@stinson.com

Louis E. Dolan on behalf of Creditor California Self-Insurers' Security Fund
ldolan@nixonpeabody.com, was.managing.clerk@nixonpeabody.com

Jennifer V. Doran on behalf of Creditor DeMatteo Management, Inc.
jdoran@haslaw.com

Seth A. Drucker on behalf of Creditor McKinley, Inc.
sdrucker@honigman.com

Joseph M. DuRant on behalf of Creditor City of Newport News, Virginia
jdurant@nngov.com

Ronald G. Dunn on behalf of Creditor Savitri Cohen
bstasiak@gdwo.net

Robert A. Dybing on behalf of Creditor International Business Machines Corporation
rdybing@t-mlaw.com, pfemiani@t-mlaw.com

Sara B. Eagle on behalf of Creditor Pension Benefit Guaranty Corporation
eagle.sara@pbgc.gov, efile@pbgc.gov

Carl A. Eason on behalf of Creditor The Columbus Dispatch
bankruptcy@wolriv.com

Robert C. Edmundson on behalf of Creditor Office of Attorney General, Pennsylvania Department of Revenue
redmundson@attorneygeneral.gov

Elizabeth A. Elam on behalf of Creditor City of Southlake, Texas

betsyela@toase.com, wtaylor@toase.com; cfickes@toase.com; kkaos@toase.com

Tara L. Elgie on behalf of Creditor Schimenti Construction Company LLC
telgie@hunton.com

Bradford F. Englander on behalf of Creditor Alliance Entertainment Corporation
benglander@wtplaw.com, bnestor@wtplaw.com; [wbates@wtplaw.com](mailto:wbatres@wtplaw.com)

Augustus C. Epps on behalf of Creditor 1030 W. North Ave. Bldg. LLC
aep@cbllaw.com, lthompson@cbllaw.com

David J. Ervin on behalf of Creditor Ashkenazy Management Corp.
dervin@kelleydrye.com, KDWBKruptcyDepartment@kelleydrye.com

Belkys Escobar on behalf of Creditor County of Loudoun, VA
Belkys.Escobar@loudoun.gov,
Karen.Stapleton@loudoun.gov; bankrupt@loudoun.gov; Brian.Boone@loudoun.gov

K. Stewart Evans on behalf of Interested Party Longacre Opportunity Fund, L.P.
evansks@pepperlaw.com, brakeg@pepperlaw.com

Michael P. Falzone on behalf of Creditor 502-12 86th Street LLC
mfalzone@hf-law.com, stoboz@hf-law.com

Robert J. Feinstein on behalf of Creditor Committee Official Committee of Unsecured Creditors
rfeinstein@pszilaw.com, rorgel@pszilaw.com; dharris@pszilaw.com

John D. Fiero on behalf of Creditor Committee Official Committee of Unsecured Creditors
jfiero@pszilaw.com

Douglas M. Foley on behalf of Debtor Abbott Advertising Agency, Inc.
dfoley@mcguirewoods.com

Christine McAteer Ford on behalf of Creditor Ada Alicea
cford@mdpcelaw.com

Gina M Fornario on behalf of Creditor California Self-Insurers' Security Fund
gforanario@nixonpeabody.com,
klove@nixonpeabody.com; sf.managing.clerk@nixonpeabody.com

Jeremy S. Friedberg on behalf of Creditor Toshiba America Consumer Products, L.L.C.
jeremy.friedberg@liff.com, ecf@liff.com; gordon.young@liff.com

Jeremy S. Friedberg on behalf of Creditor Toshiba America Information Systems, Inc.
jf@liff.com, ecf@liff.com; gordon.young@liff.com

Mark J. Friedman on behalf of Attorney Mark Friedman
mark.friedman@dlapiper.com

Ellen A. Friedman on behalf of Creditor Hewlett Packard Company
efriedman@friedumspring.com, ramona.neal@hp.com; ken.higman@hp.com

Gary V. Fulghum on behalf of Creditor Hillson Electric Incorporated
gfulghum@sblsg.com, jschmeltz@sblsg.com; jrapp@sblsg.com

Karen L. Gilman on behalf of Creditor Toys R Us - Delaware, Inc.
KGILMAN@WOLFFSAMSON.COM

Lawrence H. Glanzer on behalf of Creditor Citrus Park CC, LLC
glanzer@rlglegal.com, mozelle@rlglegal.com

Brad R. Godshall on behalf of Creditor Committee Official Committee of Unsecured Creditors
bgodshall@pszilaw.com

Douglas R. Gonzales on behalf of Creditor City of Homestead, Florida
dgonzales@wsh-law.com

Anitra D. Goodman Royster on behalf of Creditor Connexion Technologies
anitra.royster@nelsonmullins.com,
betsy.burn@nelsonmullins.com, raina.steward@nelsonmullins.com; terri.gardner@nelsonmullins.com

Kimbell D. Gourley on behalf of Creditor Engineered Structures, Inc.
kgourley@idalaw.com, sprescott@idalaw.com

Garry M. Graber on behalf of Interested Party Manufacturers & Traders Trust Company, as Trustee
GGraber@HodgsonRuss.com,
dpiazza@hodgsonruss.com; ncalderon@hodgsonruss.com

Jeffrey J. Graham on behalf of Creditor Greenwood Point, LP
jgraham@taftlaw.com,
dwineinger@taftlaw.com; ecfclerk@taftlaw.com; docket@taftlaw.com

William A. Gray on behalf of Creditor A.D.D. Holdings, L.P.
bgray@sandsanderson.com,
lhudson@sandsanderson.com; tebel@sandsanderson.com; kwalters@sandsanderson.com; mburns@sandsanderson.com

William F. Gray on behalf of Creditor Triangle Equities Junction LLC
wgray@torys.com, tmartin@torys.com

Peter A. Greenburg on behalf of Creditor Premier Resources, LLC
pgreenburg@aol.com

Steven H. Greenfeld on behalf of Creditor Becker Trust LLC
steveng@cohenbaldinger.com

David A. Greer on behalf of Creditor Pan Am Equities

dgreer@davidgreerlaw.com, ecf@davidgreerlaw.com

Elizabeth L. Gunn on behalf of Creditor Hewlett Packard Company
egunn@durettebradshaw.com, sryan@durettebradshaw.com

Richard E. Hagerty on behalf of Attorney Troutman Sanders LLP
richard.hagerty@troutmansanders.com,
sharron.fay@troutmansanders.com; anne.clark@troutmansanders.com; barbara.webne@troutmansanders.com

Jerry Lane Hall on behalf of Creditor National Retail Properties, Inc.
jerry.hall@pillsburylaw.com, patrick.potter@pillsburylaw.com

Aaron L. Hammer on behalf of Creditor National Product Care Company
ahammer@freebornpeters.com

Gina Baker Hantel on behalf of Creditor Tennessee Dept. Of Revenue
agbankcal@ag.tn.gov

Michael E. Hastings on behalf of Creditor Eastern Security Corp.
michael.hastings@leclairryan.com, tonya.whitt@leclairryan.com

David Emmett Hawkins on behalf of Creditor Archon Group, L.P.
dhawkins@velaw.com

Dion W. Hayes on behalf of Debtor Abbott Advertising Agency, Inc.
dhayes@mcquirewoods.com

Melissa S. Hayward on behalf of Creditor Home Depot USA, Inc.
mhayward@lockelord.com

Andrew H. Herrick on behalf of Creditor County of Albemarle
aherrick@albemarle.org

William Heuer on behalf of Transferee Korea Export Insurance Corporation
whauer@duanemorris.com

Robert B. Hill on behalf of Creditor Columbia Plaza Joint Venture
kcummins@hillrainey.com

John E. Hilton on behalf of Creditor Thirty & 141, L.P.
je@carmodymacdonald.com

Matthew E. Hoffman on behalf of Creditor Audiovox Corporation
mehoffman@duanemorris.com, ltaylor@duanemorris.com; lstopol@levystopol.com

David D. Hopper on behalf of Creditor Rio Associates Limited Partnership
ddhopper@chlhf.com, scilino@chlhf.com

Brian D. Huben on behalf of Creditor Cousins Properties Incorporated

brian.huben@kattenlaw.com,
carole.levine@kattenlaw.com; dustin.branch@kattenlaw.com; donna.carolo@kattenlaw.com

Lisa Taylor Hudson on behalf of Creditor A.D.D. Holdings, L.P.
lhudson@sandsanderson.com

Peter C. Hughes on behalf of Creditor 553 Retail, LLC
phughes@dilworthlaw.com

F. Marion Hughes on behalf of Creditor CAP Brunswick, LLC
marion.hughes@smithmoorelaw.com

Jessica Regan Hughes on behalf of Interested Party AmCap Arborland LLC
jhughes@seyfarth.com, swells@seyfarth.com; wcdocketing@seyfarth.com

Martha E. Hulley on behalf of Creditor Benenson Capital Company
martha.hulley@leclairryan.com,
erik.gustafson@leclairryan.com; sarahleitner.kelly@leclairryan.com; deborah.sharpe@leclairryan.com

Richard Iain Hutson on behalf of Creditor Caribbean Display & Construction, Inc.
rhutson@fullertonlaw.com

Alexander Xavier Jackins on behalf of Creditor Engineered Structures, Inc.
ajackins@seyfarth.com

Thomas Neal Jamerson on behalf of Creditor Galleria Plaza, Ltd.
tjamerson@hunton.com, tomjam2003@yahoo.com

Russell R. Johnson on behalf of Creditor Averatec/Trigem USA
russ4478@aol.com

Christopher A. Jones on behalf of Creditor Annapolis Plaza LLC
cajones@wtplaw.com, wbates@wtplaw.com

Nathan Jones on behalf of Creditor US Debt Recovery III, LP
heather@usdrllc.com

Dexter D. Joyner on behalf of Creditor Pasadena Independent School District
caaustin@comcast.net

Gary M. Kaplan on behalf of Creditor ELL MCKEE LLC
gmkaplan@howardrice.com

Douglas D. Kappler on behalf of Creditor Watercress Associates, LP, LLP dba Pearlridge Center
dkappler@rdwlawcorp.com

Lawrence Allen Katz on behalf of Creditor Morgan Hill Retail Venture, LP
lakatz@venable.com

Adam K. Keith on behalf of Creditor The Marketplace of Rochester Hills Parcel B, LLC
akeith@honigman.com, tsable@honigman.com

Gerald P. Kennedy on behalf of Attorney Plaza Las Palmas, LLC
gpk@procopio.com

Brian F. Kenney on behalf of Creditor 44 North Properties, LLC
bkenney@milesstockbridge.com

Erin Elizabeth Kessel on behalf of Creditor Cleveland Construction, Inc.
ekessel@spottsfain.com,
kligon@spottsfain.com; jwest@spottsfain.com; rchappell@spottsfain.com; tmoore@spottsfain.com; eanderson@spottsfain.com

Thomas G. King on behalf of Creditor Southland Acquisitions, LLC
tking@kech.com, dholmngren@kech.com

Jeffrey E. Klusmeier on behalf of Creditor Missouri Attorney General's Office
Jeff.Klusmeier@ago.mo.gov

Kurt M. Kobiljak on behalf of Creditor City of Taylor Michigan
kkobi@aol.com

Michael S. Kogan on behalf of Creditor Ditan Distribution LLC
mkogan@ecjlaw.com, rfraire@ecjlaw.com

Charles Gideon Korrell on behalf of Creditor Hoprock Limonite, LLC
gkorrell@dl.com

Leonidas Koutsouftikis on behalf of Creditor Washington Real Estate Investment Trust
lkouts@magruderpc.com, mcook@magruderpc.com

Darryl S. Laddin on behalf of Creditor Verizon Communications Inc.
bkrfilings@agg.com

Kevin A. Lake on behalf of Creditor Belkin International
klake@vanblk.com, lseaborne@vanblk.com, dszabo@vanblk.com, dalessi@vanblk.com

John J. Lamoureux on behalf of Creditor Amore Construction Company
jlamoureux@carltonfields.com, lmccullough@carltonfields.com; tpaecf@cfdom.net

Ian S. Landsberg on behalf of Creditor Eagleridge Associates, LLC
ilandsberg@lm-lawyers.com

Jennifer Langan on behalf of Creditor Pennsylvania State Treasurer
jlangan@patreasury.org

Stephen E. Leach on behalf of Creditor Children's Discovery Centers of America, Inc.
sleach@ltblaw.com, ndysart@ltblaw.com; msarata@ltblaw.com; rrosado@ltblaw.com

Richard E. Lear on behalf of Creditor CapTech Ventures, Inc.
richard.lear@hklaw.com, kimi.odonnell@hklaw.com

Robert L. Lehane on behalf of Creditor AAC Management Corp.
rllehane@kelleydrye.com, KDWBankruptcyDepartment@KelleyDrye.com

Stephen K. Lehnardt on behalf of Creditor 3725 Airport Boulevard, LP
skleh@lehnardt-law.com

Justin D. Leonard on behalf of Creditor Andrews Electronics
jleonard@balljanik.com

Fredrick J. Levy on behalf of Creditor Bush Industries, Inc.
flevy@olshanlaw.com, mmarck@olshanlaw.com; ssallie@olshanlaw.com

Dennis T. Lewandowski on behalf of Creditor Tritronics, Inc.
dtlewand@kaufcan.com

Arthur Lindquist-Kleissler on behalf of Creditor Millman 2000 Charitable Trust
arthurlindquistkleissler@msn.com

James V. Lombardi on behalf of Creditor AmREIT, a Texas real estate investment trust
jlombardi@rossbanks.com

Henry Pollard Long on behalf of Creditor Cypress/CC Marion I, L.P.
hlong@hunton.com

John E. Lucian on behalf of Creditor Cellco Partnership d/b/a Verizon Wireless
lucian@blankrome.com

Donald K. Ludman on behalf of Creditor SAP Retail Inc. and Business Objects
dludman@brownconnery.com

Christine D. Lynch on behalf of Creditor E&A Northeast Limited Partnership
clynch@goulstonstorr.com

Joel T. Marker on behalf of Creditor Ammon Properties, LC
joel@mbt-law.com

Jeremy W. Martin on behalf of Creditor Escambia County Tax Collector
jeremymartin@lawmh.com, lthompson@lawmh.com; sgardener@law.mh.com

Richard M. Maseles on behalf of Creditor Missouri Department of Revenue
edvaecf@dor.mo.gov

Gary E. Mason on behalf of Plaintiff Marlon Mondragon
gmason@masonlawdc.com

Bruce H. Matson on behalf of Creditor Bank of America, N.A., as Agent
bruce.matson@leclairryan.com,
kim.lord@leclairryan.com; stacy.beaulieu@leclairryan.com

David McCall on behalf of Creditor City of Garland Tax Assessor/Collector
bankruptcy@ntexas-attorneys.com

Kevin R. McCarthy on behalf of Creditor Baltimore Gas and Electric Company
krm@mccarthywhite.com, wdw@mccarthywhite.com; clm@mccarthywhite.com

Michael Keith McCrory on behalf of Creditor Klipsch, LLC
mmcrory@btlaw.com

Neil E. McCullagh on behalf of Creditor Chino South Retail PG, LLC
nmccullagh@spottsfain.com, jstern@spottsfain.com

W. Clarkson McDow, Jr.
USTPRegion04.RH.ECF@usdoj.gov

David R. McFarlin on behalf of Creditor Alexander H Bobinski, as Trustee under Trust No. 1001
dmcfarlin@whmh.com, psmith@whmh.com; mbretana@whmh.com; lde@whmh.com

Annemarie G. McGavin on behalf of Creditor Dick's Sporting Goods, Inc.
annemarie.mcgavin@bipc.com

Frank F. McGinn on behalf of Creditor Iron Mountain Information Management, Inc.
ffm@bostonbusinesslaw.com

Robert P. McIntosh on behalf of Creditor United States of America
Robert.McIntosh@usdoj.gov

John D. McIntyre on behalf of Creditor Carnegie Management and Development Corporation
jmcintyre@wilsav.com, wedwards@wilsav.com

John G. McJunkin on behalf of Creditor 120 Orchard LLC
jmcjunkin@mckennalong.com, sparson@mckennalong.com

Jennifer McLain McLemore on behalf of Creditor 1030 W. North Ave. Bldg. LLC
jmclmore@cblaw.com, avaughn@cblaw.com

Janet M. Meiburger on behalf of Creditor Ricmac Equities Corporation
admin@meiburgerlaw.com

Stephen A. Metz on behalf of Creditor Saul Holdings Limited Partnership
smetz@shulmanrogers.com

C. Christopher Meyer on behalf of Creditor Photoco, Inc.
cmeyer@ssd.com

Kalina Boyanova Miller on behalf of Creditor First Industrial Realty Trust, Inc.
kmiller@wileyrein.com, rours@wileyrein.com

Stephan William Milo on behalf of Creditor THF Chesterfield Two Development, L.L.C.
smilo@wawlaw.com,
hvanlear@wawlaw.com; jjohnson@wawlaw.com; khunter@wawlaw.com; KRichman@wawlaw.com; wlevin@wawlaw.com

Satchidananda Mims
smims21@hotmail.com

Malcolm M. Mitchell on behalf of Creditor AOL LLC
mmitchell@vorys.com,
sbanerjee@vorys.com; kdlehman@vorys.com; cmbrosius@vorys.com

Byron Z. Moldo on behalf of Creditor Centre at 38th Street TIC, LLC
bmoldo@ecjlaw.com, tmelendez@ecjlaw.com

Joseph T. Moldovan on behalf of Creditor Empire HealthChoice Assurance, Inc. d/b/a Empire Blue Cross Blue Shield
bankruptcy@morrisoncohen.com

Denise S. Mondell on behalf of Creditor State of Connecticut, Departments of Labor and Revenue Services
denise.mondell@po.state.ct.us

Valerie P. Morrison on behalf of Creditor Daly City Partners I, L.P.
vmorrison@wileyrein.com, rours@wileyrein.com

Michael D. Mueller on behalf of Creditor Acadia Realty Limited Partnership
mmueller@cblaw.com, avaughn@cblaw.com

Mona M. Murphy on behalf of Creditor Samsung Electronics America, Inc.
mona.murphy@akerman.com, tammy.scott@akerman.com; joan.levit@akerman.com

Thomas Francis Murphy on behalf of Creditor Robert E. Greenberg Gateway Woodside, Inc.
tmurphy@dclawfirm.com, rgreenberg@dclawfirm.com

Linda Lemmon Najjoun on behalf of Interested Party Food Lion LLC
lnajjoun@hunton.com

Steven H. Newman on behalf of Creditor 502-12 86th Street LLC
snewman@katskykorins.com

Kevin M. Newman on behalf of Creditor Cameron Bayonne, LLC
knewman@menterlaw.com

Alan Michael Noskow on behalf of Creditor CC Plaza Joint Venture, LLP
anoskow@pattonboggs.com, tbryan@pattonboggs.com

Darlene M. Nowak on behalf of Creditor Giant Eagle, Inc.
nowak@marcus-shapira.com

Michael John O'Grady on behalf of Creditor Convergys Customer Management Group Inc.

mjogrady@fbtlaw.com, ahammerle@fbtlaw.com

Samuel S. Oh on behalf of Creditor Averatec/Trigem USA

sam.oh@limruger.com

Tracey Michelle Ohm on behalf of Creditor Waste Management, Inc.

tohm@stinson.com

Mary E. Olden on behalf of Creditor Colorado Structures, Inc. dba CSI Construction Co.

molden@mhalaw.com, akauba@mhalaw.com

Laura Otenti on behalf of Interested Party Salem Rockingham LLC

lotenti@pbl.com

Ronald Allen Page on behalf of Creditor Cormark, Inc.

rpage@cantorarkema.com

Craig M. Palik on behalf of Creditor Bond Circuit IV Delaware Business Trust

cpalik@yahoo.com, cpalik@mhlawyers.com

R. Chase Palmer on behalf of Creditor Dennis Morgan

cpalmerplf@gmail.com

Min Park on behalf of Creditor Inland Southwest Management LLC, Inland American Retail Management LLC, Inland US Management LLC, Inland Pacific Property Services LLC, Inland Continental Property Management Corp., and Inland Commere

mpark@cblh.com

Paul J. Pascuzzi on behalf of Creditor Belleville News-Democrat

ppascuzzi@ffwplaw.com

Peter M. Pearl on behalf of Creditor PrattCenter, LLC

ppearl@sandsanderson.com

Frank T. Pepler on behalf of Creditor Morgan Hill Retail Venture, LP

fpepler@peplermastromonaco.com

Christopher L. Perkins on behalf of Attorney LeClair Ryan, A Professional Corporation

christopher.perkins@leclairryan.com,

stacie.wetzler@leclairryan.com; stacy.beaulieu@leclairryan.com

Rhett E. Petcher on behalf of Creditor Engineered Structures, Inc.

rpetcher@seyfarth.com

Loc Pfeiffer on behalf of Creditor Schottenstein Property Group, Inc.

loc.pfeiffer@kutakrock.com,

lynda.wood@kutakrock.com; sheree.edington@kutakrock.com; kimberly.pierro@kutakrock.com

Kimberly A. Pierro on behalf of Creditor CBL & Associates Management, Inc.
kimberly.pierro@kutakrock.com,
sheree.edington@kutakrock.com; sara.abrams@kutakrock.com; lynda.wood@kutakrock.com; michael.condyles@kutakrock.com

David M. Poitras on behalf of Interested Party THQ, Inc.
dmp@jmbm.com

Jeffrey N. Pomerantz on behalf of Creditor Committee Official Committee of Unsecured Creditors
jpomerantz@pszilaw.com

Courtney E. Pozmantier on behalf of Creditor Paramount Home Entertainment
cpozmantier@ktbslaw.com, mtuchin@ktbslaw.com

Raymond Pring on behalf of Creditor Laura Scannell
rpring@pringlaw.com

Julie Ann Quagliano on behalf of Creditor AT&T
quagliano@quagseeg.com, belcher@quagseeg.com

Albert F. Quintrall on behalf of Creditor Wayne-Dalton Corp.
a.quintrall@quintrall.com

William H. Ramsey on behalf of Creditor State of Wisconsin - Office of the State Treasurer
ramseywh@doj.state.wi.us, gurholtks@doj.state.wi.us

Victoria A. Reardon on behalf of Creditor State of Michigan, Department of Treasury
reardonv@michigan.gov, jacksonst@michigan.gov

Michael Reed on behalf of Creditor Williamson County et al
othercourts@mvalaw.com

Linda Dianne Regenhardt on behalf of Creditor D-Link Systems, Inc.
lregenhardt@garyreg.com, itadlock@garyreg.com; cmarchant@garyreg.com

Thomas W. Repczynski on behalf of Creditor Graphic Communications, Inc.
trepczynski@beankinney.com, bsockwell@beankinney.com

Matthew Righetti on behalf of Creditor Jack Hernandez
matt@righettilaw.com, erin@righettilaw.com

Fred B. Ringel on behalf of Creditor F&M Properties, Inc.
fbr@robinsonbroq.com

Philip M. Roberts on behalf of Creditor CDB Falcon Sunland Plaza, LP
mroberts@bdlaw.org

Terri A. Roberts on behalf of Creditor Pima County
pcaocvbk@pcao.pima.gov

James H. Rollins on behalf of Creditor Plaza Las Americas, Inc.
jim.rollins@hklaw.com, avis.francis@hklaw.com

Martha E. Romero on behalf of Creditor Riverside County California
romero@mromerolawfirm.com

Jeremy Brian Root on behalf of Creditor ACCO Brands Corporation
jroot@bklawva.com, tmartin@bklawva.com

Alan Rosenblum on behalf of Creditor Paramount Home Entertainment Inc
alan@rosenblumllc.com, lynn@rosenblumllc.com

Edward L. Rothberg on behalf of Creditor Circuit Sports, L.P.
erothberg@wkpz.com

David R. Ruby on behalf of Creditor Holyoke Crossing Limited Partnership II
druby@mcsweeneycrump.com,
bankruptcy@mcsweeneycrump.com; druby@ecf.epigsystems.com; druby@mcsweeneycrump.com

Michael F. Ruggio on behalf of Creditor MD-GSI Associates
mruggio@polsinelli.com,
cdancy@polsinelli.com; ahatch@polsinelli.com; tbackus@polsinelli.com

Eric Christopher Rusnak on behalf of Creditor Microsoft Corporation
eric.rusnak@klgates.com, klgatesbankruptcy@klgates.com

Jeremy W. Ryan on behalf of Creditor FR E2 Property Holding, L.P.
jryan@saul.com

Denyse Sabagh on behalf of Creditor Audiovox Corporation
dsabagh@duanemorris.com

Travis Aaron Sabalewski on behalf of Creditor IKON Office Solutions, Inc.
tsabalewski@reedsmith.com, shicks@reedsmith.com

Michael J. Sage on behalf of Creditor Pan Am Equities
msage@omm.com, kzeldman@omm.com

Rebecca L. Saitta on behalf of Creditor Bond C.C. I Delaware Business Trust
rsaitta@wileyrein.com, roure@wileyrein.com

Troy Savenko on behalf of Creditor Ada Alicea, on behalf of herself and all others similarly situated
tsavenko@gregkaplaw.com, nferenbach@gregkaplaw.com

Jeffrey Scharf on behalf of Creditor Commonwealth of Virginia, Department of Taxation
jeff@taxva.com, tacspc@gmail.com

Nancy R. Schlichting on behalf of Creditor Antor Media Corporation

nschlichting@kolawfirm.com, bshmidheiser@kolawfirm.com; mhall@kolawfirm.com

Ann E. Schmitt on behalf of Attorney Ann Schmitt
aschmitt@culbert-schmitt.com

William H. Schwarzschild on behalf of Creditor DIRECTV, Inc.
tschwarz@williamsmullen.com

Douglas Scott on behalf of Creditor PULASKI COUNTY TREASURER
BankruptcyCounsel@gmail.com

Sheila L. Shadmand on behalf of Creditor Ventura In Manhattan, Inc.
slshadmand@jonesday.com

Gilbert D. Sigala on behalf of Creditor John Batloff
sigalaw1@aol.com

Glenn H. Silver on behalf of Creditor CC Joilet Trust
ctbghs@aol.com

Jesse Silverman on behalf of Creditor Bear Valley Road Partners LLC
silvermanj@ballardspahr.com, pollack@ballardspahr.com

Kevin L. Sink on behalf of Creditor Glenmoor Limited Partnership
ksink@nichollscrampton.com

John Ronald Smith on behalf of Creditor Panasonic Corporation of North America
jrsmith@hunton.com

Eric J. Snyder on behalf of Creditor Condan Enterprises LLC
esnyder@sillerwilk.com

Rhysa Griffith South on behalf of Creditor Henrico County, Virginia
sou06@co.henrico.va.us

Aryeh E. Stein on behalf of Creditor Annapolis Plaza LLC
astein@wtplaw.com

Richard F. Stein on behalf of Creditor Internal Revenue Service
richard.f.stein@irsounsel.treas.gov

Peter E. Strniste on behalf of Creditor Schimenti Construction Company LLC
pstrniste@rc.com, kcooper@rc.com

Mark Stromberg on behalf of Creditor CDB Falcon Sunland Plaza, LP
mark@stromberglawfirm.com,
sschild@stromberglawfirm.com; kiacaboni@stromberglawfirm.com

Lisa P. Sumner on behalf of Creditor Compass Group U.S.A. Inc.
lsumner@poyners.com, cjeckel@poyners.com

Courtney R. Sydnor on behalf of Interested Party 99 Cents Only Stores
csydnor@shulmanrogers.com, ismith@shulmanrogers.com

Jeffrey L. Tarkenton on behalf of Creditor Acer American Holdings Corp.
jtarkenton@wcsr.com, toross@wcsr.com

Lynn L. Tavenner on behalf of Creditor Committee Official Committee of Unsecured Creditors
ltavenner@tb-lawfirm.com, dleadbeater@tb-lawfirm.com; jsnyder@tb-lawfirm.com; stavenner@tb-lawfirm.com

Mark D. Taylor on behalf of Creditor Triangle Equities Junction LLC
mataylor@kilpatrickstockton.com

Robert D. Tepper on behalf of Creditor CP Management Corp. as agent for Orland Towne Center, L.L.C.
rtepper@sabt.com, pcoover@sabt.com

Roy M. Terry on behalf of Creditor Hewlett Packard Company
rterry@durettebradshaw.com, sryan@durettebradshaw.com

Lucy L. Thomson
lthomson2@csc.com

Dylan G. Trache on behalf of Creditor LG Electronics USA, Inc.
dtrache@wileyrein.com, rours@wileyrein.com

Suzanne J. Trowbridge on behalf of Creditor 601 Plaza LLC
sjt@goodwingoodwin.com

Ronald M. Tucker on behalf of Creditor Simon Property Group, Inc.
rtucker@simon.com,
cmartin@simon.com, rwoodruff@simon.com, psummers@simon.com, lgrifton@simon.com,
m.dgrimes@simon.com

Robert B. Van Arsdale on behalf of U.S. Trustee W. McDow, Jr.
Robert.B.Van.Arsdale@usdoj.gov, USTPRegion04.RH.ECF@usdoj.gov

John P. Van Beek on behalf of Creditor Sacco of Maine, LLC
jvanbeek@ygvb.com,
awinokurzew@ygvb.com; hcurrier@ygvb.com; mfaulkner@ygvb.com

James G. Verrillo on behalf of Creditor 444 Connecticut Avenue, LLC, Store #3690
jverrillo@zeislaw.com

Madeleine C. Wanslee on behalf of Interested Party Madeleine Wanslee
mwanslee@gustlaw.com, rstein@gustlaw.com

Mitchell B. Weitzman on behalf of Creditor Madison Waldorf, LLC
mweitzman@beankinney.com, npeelee@beankinney.com

Jennifer J. West on behalf of Creditor Entergy Arkansas, Inc.
jwest@spottsfain.com,
rchappell@spottsfain.com; kligon@spottsfain.com; skelly@spottsfain.com; tmoore@spottsfain.com; ecorbett@spottsfain.com; eanderson@spottsfain.com

Robert S. Westermann on behalf of Creditor COMSYS Information Technology Services, Inc. and COMSYS Services, LLC
rwestermann@hf-law.com, sharris@hf-law.com

David B. Wheeler on behalf of Creditor South Carolina Electric & Gas Company and Public Service of North Carolina
davidwheeler@mvalaw.com

Brenda M. Whinery on behalf of Creditor Windsail Properties
bwhinery@mcranzlaw.com

Nicholas W. Whittenburg on behalf of Creditor Cleveland Towne Center, LLC
nwhittenburg@millermartin.com, mcsmith@millermartin.com

Michael L. Wilhelm on behalf of Creditor Harry Hallaian
ECF@w2lg.com

Amy Pritchard Williams on behalf of Creditor Cobb Corners II, Limited Partnership
amy.williams@klgates.com, hailey.andresen@klgates.com

Walter Laurence Williams on behalf of Creditor Wayne VF LLC
walter.williams@wilsonelser.com, mary.skow@wilsonelser.com

William A. Wood on behalf of Creditor Panattoni Development Company, Inc. as Agent for Charles L. Kessinger, Jacque L. Kessinger and FRE Northglenn Retail, LLC
trey.wood@bglp.com, gale.gattis@bglp.com

Gordon S. Woodward on behalf of Creditor Commerce Technologies, Inc.
gwoodward@schnader.com

J. Christian Word on behalf of Liquidator Gordon Brothers Retail Partners, LLC
chefiling@lw.com; robert.klyman@lw.com

Hale Yazicioglu on behalf of Creditor AVR CPC Associates, LLC
hyazicioglu@jshllp.com

Martin J. Yeager on behalf of Creditor Loren Stocker
myeager@beankinney.com, TGross@beankinney.com

Meredith Linn Yoder on behalf of Creditor MDS Realty II, LLC
myoder@parkerpollard.com, sscarce@parkerpollard.com; treid@parkerpollard.com

Jonathan W. Young on behalf of Creditor ACCO Brands Corporation
young@wildman.com

German Yusuf on behalf of Creditor Pima County

pcaocvbk@pcao.pima.gov, alison.moreno@pcao.pima.gov

Erica S. Zaron on behalf of Creditor Miami-Dade County Tax Collector
cao.bkc@miamidade.gov

Sheila G. deLa Cruz on behalf of Creditor 502-12 86th Street LLC
sdelacruz@hf-law.com, jbsmith@hf-law.com

/s/Jeffrey A. Scharf